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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

DP CONCRETE PRODUCTS, LLC : DOCKET NO. 2:08 CV 571

VS. : JUDGE MINALDI

AMERICAN SPRING WIRE CORP. : MAGISTRATE JUDGE HANNA

MEMORANDUM ORDER

Before the Court is a Motion in Limine to bar evidence concerning defendant's internet site, filed by defendant American Spring Wire Corp. ("ASW") [doc. 69]. The plaintiff, DP Concrete Products, L.L.C. ("DP"), filed an Opposition [doc. 85]. This matter is set for a jury trial on January 25, 2010.

ASW argues that the internet site evidence is irrelevant, because the information contained on its internet site is general to ASW's business and does not relate to the parties' sale of goods transaction at the center of this lawsuit. Additionally, ASW argues that there is no evidence that DP reviewed the site's information prior to the lawsuit, or relied on it in connection with the parties' transaction.

DP contends that information about ASW's sales figures and revenues is relevant to defeat ASW's affirmative defense of impossibility of performance. DP argues that ASW's website shows ASW is a giant manufacturer and international supplier and DP wants to use that information to argue that ASW would not have been materially affected by honoring the parties' contract. DP also cites two internet articles from Crain's Cleveland Business Journal discussing ASW's business.


Federal Rule of Evidence 401 defines “relevant evidence” as:

[E]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Evidence concerning ASW’s sales figures and revenues are relevant to ASW’s affirmative defense of impossibility of performance. The information on ASW’s internet site has no indication or foundation of reliability; therefore, evidence relating to general website or internet information will be excluded. The two articles, or press releases, from the business journal are self-authenticating under Federal Rule of Evidence 902(6); accordingly, information from those articles are admissible.

IT IS ORDERED that ASW’s Motion in Limine, [doc. 69], is hereby GRANTED in part and DENIED in part.

Lake Charles, Louisiana, this 22 day of January, 2010.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE